

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ALPHONSO EDUARDO GONZALES, )

)

Petitioner, )

)

v. )

Case No. 4:15-cv-01790-AGF

)

UNITED STATES OF AMERICA, )

)

Respondent. )

**MEMORANDUM & ORDER**

This matter is before the Court on Petitioner's status report regarding his pending 28 U.S.C. § 2255 action. ECF No. 23. The Court will construe Petitioner's status report as a motion to amend the sentence and judgment in the underlying criminal matter, pursuant to an agreement between the parties. For the reasons set forth below, Petitioner's request will be granted.

Petitioner filed this § 2255 motion to vacate, set aside, or correct sentence on December 4, 2015, asserting that his plea counsel failed to file a notice of appeal on his behalf following sentencing. ECF No. 1. On February 4, 2019, Petitioner filed a pro se motion to amend his § 2255 motion to add several additional claims of ineffective assistance of counsel, including a claim challenging the imposition of a \$20,000 fine. ECF No. 12.

In the instant status report, Petitioner, through counsel, contends that he wishes to proceed with Petitioner's claim challenging the fine imposed upon Petitioner. He claims that his attorney submitted financial documents to the United States Probation Office, and

Probation Officer Thomas Sullivan reviewed those documents and investigated Petitioner's finances. Petitioner states that Probation Officer Sullivan informed the parties that had Petitioner's finances been properly presented at the time of sentencing, the Probation Office would not have recommended the fine imposed. Petitioner's counsel represents that it is her understanding that the United States will defer to the probation officer's opinion on the issue. Petitioner's counsel asks the Court to amend Petitioner's sentence and judgment to vacate the fine in his underlying criminal matter. Petitioner states that he will then dismiss this § 2255 action with prejudice. The United States did not object to the status report or file any opposition to Petitioner's request.

The Court will construe Petitioner's status report as a motion to amend Petitioner's sentence and judgment to vacate the fine imposed in his underlying criminal matter, pursuant to the agreement between the. The Court will grant his request and deny as moot Petitioner's pending motion to amend the § 2255 petition to add new claims.

Accordingly,

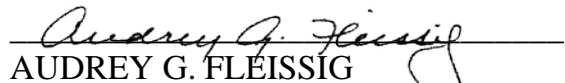
**IT IS HEREBY ORDERED** that, based upon the agreement between the parties and the representations made by Petitioner and the probation officer, Petitioner's status report, which the Court construes as a motion to amend Petitioner's sentence and judgment to vacate the fine imposed in Petitioner's underlying criminal matter, is **GRANTED**. ECF No. 23.

**IT IS FURTHER ORDERED** that the Clerk of Court is directed to prepare an amended judgment in *United States v. Gonzales*, 4:14-CR-0025-AGF-1, vacating the

\$20,000 fine imposed, in accordance with this Memorandum and Order. The amended judgment will be filed separately.

**IT IS FURTHER ORDERED** that within **seven (7) days** after the entry of the amended judgment, Petitioner shall dismiss this § 2255 action with prejudice.

**IT IS FURTHER ORDERED** that Petitioner's motion to amend his § 2255 petition is **DENIED AS MOOT**. ECF No. 12.

  
AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated this 21st day of June, 2019.